99TH CONGRESS
2d Session

HOUSE OF REPRESENTATIVES

REPT. 99-755
Part 1

TEMPORARY STAY OF DEPORTATION FOR CERTAIN SALVADORANS

AUGUST 6, 1986.—Ordered to be printed

Mr. RODINO, from the Committee on the Judiciary, submitted the following

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REPORT

together with

DISSENTING VIEWS

[To accompany H.R. 822 which on January 30, 1985, was referred jointly to the Committee on the Judiciary and the Committee on Rules]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 822) to provide for a General Accounting Office investigation and report on conditions of displaced Salavadorans, to provide certain rules of the House of Representatives and of the Senate with respect to review of the report, to provide for the temporary stay of detention and deportation of certain Salvadorans, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

TITLE I—GENERAL ACCOUNTING OFFICE INVESTIGATION AND REPORT

SEC. 101. INVESTIGATION.

(a) REQUIRING GAO INVESTIGATION ON DISPLACED SALVADORANS.—Within 60 days after the date of the enactment of this Act, the Comptroller General shall begin an investigation concerning displaced nationals of El Salvador.

(b) DETERMINATIONS ON DISPLACED SALVADORANS IN CENTRAL AMERICA.—The investigation shall determine the following with respect to displaced Salvadorans who are present in either El Salvador, Honduras, Guatemala, or Mexico, regardless of whether or not they are registered:

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(1) The number of these displaced persons and their current locations.

(2) Their place of origin in El Salvador and the period of, and reason for, their displacement.

(3) Their current living conditions, with particular attention to (A) their personal safety and the personal safety of those providing assistance to them, and (B) the availability of food and medical assistance.

(4) An assessment of (A) current efforts to provide food, medical assistance, housing, and other necessities and to secure personal safety for these persons, and (B) policies and procedures that reasonably could be implemented to assure more efficient and equitable distribution of this assistance.

(5) The impact of the war in El Salvador and of activities of officers of the Government or political parties in El Salvador on the matters described in the previous paragraphs.

(c) DETERMINATIONS ON SALVADORANS RETURNED TO EL SALVADOR FROM THE UNITED STATES.—In the case of nationals of El Salvador who have been required, (whether through deportation, voluntary departure proceeding, or otherwise) to depart from the United States and who return to El Salvador, the investigation shall assess—

(1) their condition and circumstances in El Salvador upon return from the United States, with particular attention to any violations of fundamental human rights that have occurred upon their return to El Salvador, and

(2) the extent to which these persons, upon their return, have become displaced persons within El Salvador.

(d) DETERMINATIONS ON SALVADORANS IN THE UNITED STATES IN AN UNLAWFUL STATUS.—In the case of nationals of El Salvador who are present in the United States in an unlawful status, the investigation shall—

(1) compare the situation in El Salvador with the situation in other countries during periods when nationals of those countries have been provided administrative grants of extended voluntary departure under the immigration laws,

(2) describe the policies and procedures of the United States respecting the treatment of aliens (other than Salvadorans) in the United States in similar circumstances, and

(3) describe the policies of all other countries in which Salvadorans have sought refuge as these policies concern the return of the Salvadorans to El Salvador.

SEC. 102. REPORT.

The Comptroller General shall submit to the Speaker of the House of Representatives and the President of the Senate, not later than one year after the date of the initiation of the study under section 101, a report on that study including detailed findings on the items described in subsections (b), (c), and (d) of that section.

TITLE II—CONGRESSIONAL REVIEW

SEC. 201. REFERRAL OF REPORT, COMMITTEE HEARINGS, AND COMMITTEE REPORT.

(a) REFERRAL.—The report, when submitted under section 102, shall be referred, in accordance with the rules of each House, to the standing committee or committees of each House of Congress having jurisdiction over the subjects of the report, and the report shall be printed as a document of the House of Representatives.

(b) COMMITTEE HEARINGS.—No later than 90 days of continuous session of Congress after the date of the referral of the report to a committee, the committee shall initiate hearings, insofar as such committee has legislative or oversight jurisdiction, to consider—

(1) the findings of the report,

(2) the appropriate steps that should be taken to provide assurances of personal safety and adequate, efficient, and equitable distribution of assistance with respect to Salvadorans who are displaced within El Salvador or who have fled to other countries in Central America,

(3) treaty obligations of the United States, humanitarian considerations, and previous practice of the United States respecting the treatment of aliens in similar circumstances, and

(4) whether it is appropriate to extend, remove, or alter the restrictions contained in title III.

(c) COMMITTEE REPORT.—No later than 270 days of continuous session of the Congress after the date of the referral of the report to a committee, the committee shall report to its respective House its oversight findings and any legislation it deems appropriate.

(d) TREATMENT OF CONTINUITY OF SESSION.—For purposes of this Act, continuity of session of Congress is broken only by an adjournment sine die at the end of the second regular session of a Congress, and days on which either House of Congress is not in session because of an adjournment of more than 10 days to a date certain are excluded from the computation of the periods of continuous session of Congress.

TITLE III—TEMPORARY STAY OF DEPORTATION

SEC. 301. LIMITATION OF DETENTION AND DEPORTATION.

(a) LIMITATION.—(1) Except as provided in paragraph (2), the Attorney General shall not detain or deport (to El Salvador) aliens described in subsection (b) during the period beginning on the date of enactment of this Act and ending 270 days of continuous session of Congress after the date of transmittal of the report of the Comptroller General to the Speaker of the House of Representatives under section 102.

(2) Paragraph (1) shall not be construed to prohibit the brief interrogation of an alien under section 287(a)(1) of the Immigration and Nationality Act (8 U.S.C. 1357(a)(1)) for the purpose of determining whether this section applies to particular aliens.

(b) SALVADORANS COVERED BY THE LIMITATION.—The nationals referred to in subsection (a)(1) are aliens who—

(1) are nationals of El Salvador;

(2) are continuously present in the Untied States since before November 7, 1985;

(3) are determined to be deportable only under—

(A) paragraph (1) of section 241(a) of the Immigration and Nationality Act (8 U.S.C. 1251(a)), but only as such paragraph relates to a ground for exclusion described in paragraph (14), (15), (20), (21), (25), or (32) of section 212(a) of such Act (8 U.S.C. 1182(a)), or

(B) under paragraph (2), (9), or (10) of section 241(a) of such Act (8 U.S.C. 1254(a)); and

(4) have agreed in writing to depart from the United States voluntarily upon the expiration of the period referred to in subsection (a).

SEC. 302. PERIOD OF STAY OF DEPORTATION NOT COUNTED TOWARDS OBTAINING SUSPENSION OF DEPORTATION BENEFIT.

With respect to an alien whose deportation is temporarily stayed under section 301 during a period, the period of the stay shall not be counted as a period of physical presence in the United States for purposes of section 244(a) of the Immigration and Nationality Act (8 U.S.C. 1254(a)).

SEC. 303. ALIEN'S STATUS DURING PERIOD OF EXTENSION.

During the period of the extension of an alien's voluntary departure under section 301, the alien—

(1) shall not be considered to be permanently residing in the United States under color of law,

(2) shall not be eligible for any program of public assistance furnished (directly or through reimbursement) under Federal law, and

(3) may be deemed ineligible for public assistance by a State (as defined in section 101(a)(36) of the Immigration and Nationality Act) or a political subdivision thereof which furnishes such assistance.

PURPOSE OF BILL

The purpose of this bill is to temporarily suspend the deportation of nationals of El Salvador in this country pending a General Accounting Office study of conditions in El Salvador and of displaced Salvadorans.

HISTORY OF LEGISLATION

98TH CONGRESS

As part of its oversight jurisdiction, the Subcommittee on Immigration, Refugees, and International Law, chaired by Romano L. Mazzoli, monitored closely the situation in El Salvador and the

problem of displaced Salvadorans in this country and throughout Central America. A provision stating a Sense of Congress that voluntary departure status be extended to nationals of El Salvador was included in H.R. 1510, the Immigration Reform and Control Act.

In addition, H.R. 4447, a bill to temporarily suspend the deportation of Salvadorans to El Salvador pending a study of conditions in that country was introduced and referred to the Subcommittee for consideration. The Subcommittee held hearings on H.R. 4447 on April 12, 1984 and received testimony from the Administration, concerned Members of Congress, and interested organizations. On October 3, the Subcommittee marked up H.R. 4447 and reported the bill, as amended, favorably reported to the Full Committee by a vote of 5 to 3. Due to the lateness of the Session, no action was taken on the bill by the Full Committee prior to the adjournment of the 98th Congress.

99TH CONGRESS

The bill was reintroduced in this Congress as H.R. 822. The Subcommittee held hearings on the bill on November 7, 1985. On April 16, 1986 the Subcommittee adopted a single amendment in the nature of a substitute to H.R. 822 and reported the bill, as amended, to the Full Committee without recommendation by a vote of 5 to 5.

COMMITTEE VOTE

The Full Committee on the Judiciary, on July 30, 1986, in open session and with a quorum being present, considered the bill, as amended, and by a record vote of 19 to 16 ordered H.R. 822, as amended, favorably reported to the House.

NEED FOR LEGISLATION

Beginning in 1979, civil war and internal strife escalated in El Salvador since that time, approximately 50,000 civilians have been killed, 25% of the population has been internally displaced and thousands of Salvadorans have fled to neighboring countries in the region, including the United States.

The Census Bureau estimated that in 1980 approximately 94,000 Salvadorans resided legally and illegally in the United States. The Census Bureau also testified that Salvadorans began fleeing their country "en masse" in April, 1980 as the conflict between government troops and opposition forces escalated after the assassination of Catholic Archbishop Oscar Romero. The estimates of the Salvadoran population currently residing in the United States has risen in the last six years to between 300,000 to 500,000.

Many of these Salvadorans have entered this country without the proper immigration documents and therefore are subject to deportation upon apprehension. However, deportation to a country torn by civil war and strife could jeopardize their personal safety.

In similar situations over the past 25 years, the United States has responded according to traditional humanitarian principles by granting temporary relief from deportation to countries character-

ized by the State Department as experiencing "widespread fighting, destruction and breakdown of public services and order." This discretionary relief has generally taken the form of a grant of extended voluntary departure. Extended voluntary departure has been granted, upon recommendation by the Department of State, to nationals of such countries as Afghanistan, Cambodia, Chile, Cuba, Czechoslovakia, Dominican Republic, Ethiopia, Hungary, Iran, Laos, Lebanon, Nicaragua, Poland, Rumania, Uganda, and Vietnam at different times over the past years.

As stated in a 1982 INS internal report on asylum adjudications, extended voluntary departure, or EVD, is a temporary status, granted for varying periods, in the form of a blanket determination covering all nationals of a particular country. According to this report, this status is granted under the discretionary authority of the Attorney General upon the recommendation of the Department of State in the event of "unexpected crises—war, political upheaval, etc. * * *" which could jeopardize the safety of individuals in the United States if they were returned to that country during the crises.

The State Department in its Human Rights Practices report of 1985 describes the situation in El Salvador as follows: "the establishment of a stable public order able to protect individual rights continues to be disrupted by military operations of both guerrilla and Government forces, acts of revenge, fear, and a prevailing uncertainty caused by violence. Civil liberties have been restricted by a state of emergency * * *" Amnesty International reported its continuing concerns in 1985 about massive human rights violations, including arbitrary arrest and prolonged detention trial, torture, disappearances and mass executions.

As a result of thie worsening situation in El Salvador, Members of Congress, including the Chairman of the Committee, Peter W. Rodino, Jr., church leaders, and human rights advocates began urging the Executive Branch to recommend EVD status for Salvadorans. In addition, Congress passed legislation in 1981 expressing the Sense of Congress that INS should review request by Salvadorans for extended voluntary departure on a case-by-case basis and in 1983 expressing the Sense of Congress that Salvadorans who entered this country before January 1, 1983 should be granted EVD status until the situation in El Salvador "changed sufficiently to permit their safely residing in that country" (P.L. 97-113; P.L. 98-164). These Congressional recommendations went unheeded.

In keeping with the traditional humanitarian response in cases of this nature, this legislation would mandate temporary relief from deportation for nationals of El Salvador. The Committee strongly believes that the circumstances and conditions in El Salvador are as compelling as those in other countries whose nationals have previously received discretionary relief. The Committee also expresses its disappointment that the Executive Branch failed to provide temporary discretionary relief to these people, despite the equities involved, so that mandatory nation-specific legislation has become necessary.

The Committee generally believes that nation-specific legislation is not the most desirable response, in light of the intent of the Refugee Act of 1980. Nevertheless, because of the refusal of the Attor-

ney General to grant discretionary relief to Salvadorans, it is the last resort.

Section-by-Section Analysis of the Bill, as Amended

Sec. 101.—Requires the General Accounting Office (GAO) to conduct an investigation, beginning within 60 days of enactment, concerning: (1) the number, conditions, and impact of displaced persons within El Salvador, particularly those returned to El Salvador from the United States; (2) the situation in El Salvador in comparison with other countries whose nationals had received extended voluntary departure (EVD) and the current policies of other countries toward Salvadorans.

Sec. 102.—Requires the GAO to submit a report to Congress not later than one year after beginning the study detailing the findings of the study.

Sec. 201.—Requires the appropriate committees of each House of Congress to hold hearings on the report within 90 days of receiving referral of the report and to report its findings and recommendations as to continued stay of deportation within 270 days of receiving referral of the report.

Sec. 301.—Prohibits the detention and deportation to El Salvador of Salvadoran nationals who have been continuously present in the United States since before November 7, 1985 and who have not committed crimes for a period beginning on the date of enactment until 270 days after GAO transmits its report. It also requires Salvadoran nationals to agree in writing to depart voluntarily upon the expiration of the suspension of deportation period.

Sec. 302.—Provides that the period of any stay under the bill would not count as a period of physical presence for suspension of deportation under Section 244 of the Immigration and Nationality Act.

Sec. 303.—Provides that Salvadoran nationals covered by this bill shall not be considered as permanently residing under color of law and shall not be eligible for federal programs of public assistance.

Administration Position

The Administration opposes the enactment of this legislation. The formal reports of the Department of Justice and the Department of State are set forth below.

U.S. Department of Justice,
Office of Legislative and Intergovernmental Affairs,
Washington, DC, June 11, 1986.

Hon. Peter W. Rodino, Jr.,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, DC.

Dear Mr. Chairman: This responds to your request for the views of the Department of Justice on H.R. 822, a bill to provide for a GAO investigation on conditions of displaced El Salvadorans and for the temporary stay of detention and deportation of certain nationals of El Salvador, and for other purposes. For the reasons set forth below the Department of Justice recommends against enactment of this legislation.

As you are aware, the Department of Justice has been opposed to legislation which would undermine the comprehensive and orderly system created by the Refugee Act of 1980. The bill is similar to the piecemeal and nation-specific legislation under which refugees were admitted to the United States before 1980. The principal purpose in enacting the Refugee Act of 1980 was to establish an equitable and orderly system. The Department believes that the Refugee Act affords Salvadorans ample opportunity to establish that they are eligible for asylum or withholding of deportation. Creation of a special statutory exception is therefore unnecessary, undermines the Regugee Act of 1980 and would allow Salvadorans who are here illegally and who do not qualify for asylum to remain in the United States. The system works to the extent that aliens are willing to use it. The enactment of H.R. 822 would irreparably damage not only the credibility of the whole system, but will undermine the foundation of the Refugee Act of 1980.

Section 101 of the bill would require, within 60 days after the enactment of the bill, that the Comptroller General begin an investigation concerning displaced nationals of El Salvador. The investigation would take place in El Salvador, Honduras, Guatemala, Mexico and in the United States. The purpose of the investigation in the Central American Countries would be to assess and evaluate how those countries have treated El Salvadorans within their borders. The investigation would also attempt to determine how the Government of El Salvador has treated El Salvadorans who have returned to El Salvador from the United States.

Whether a congressional investigation into the internal affairs of sovereign countries should be undertaken is a question that the Department of Justice defers to the expertise of the Department of State. However, the Department of Justice fails to see the linkage between the proposed investigation in Central American Countries as it relates to the administration of the Refugee Act of 1980.

Section 101(d) also directs the Comptroller General to investigate the policies and procedures of the United States respecting the treatment of aliens (other than Salvadorans) in the United States in similar circumstances. The policies and procedures of the United States would also be compared with the policies and procedures of all other countries in which Salvadorans have sought refuge as these policies concern the return of the Salvadorans to El Salvador.

The Department of Justice takes no position on section 101(d) of the proposed legislation, though we note as Congressman Hamilton Fish, Jr. did during hearings last fall, that a GAO report does not require legislation in order to be initiated. It can, and usually is submitted pursuant to a specific request by a member of Congress. However, as we have indicated, claims to asylum or refugee status are adjudicated on a case-by-case basis. Consequently, each claim is supported by unique factual and testimonial evidence. Therefore, a broad comparison of how aliens who are in similar circumstances as Salvadorans are treated, presupposes that all Salvadorans have certain key characteristics that are not only uniform but quantifiable. Assuming that a working definition of "similar circumstances" could be established, the comparison would be synthetic because it could only indicate how aliens other than Salvadorans are treated in comparison with an "ideal" Salvadoran alien.

Section 102 of the bill directs the Comptroller General to submit his investigatory report not later than one year after the date of the initiation of the investigation. The Department of Justice has no objection to this provision.

Section 201 directs the referral of the Comptroller General's report to each of the House of Congress having jurisdiction over the subject of the report. This section also provides that not later than 90 days after the referral of the report to a committee, the committee shall initiate hearings to consider the findings of the report, appropriate steps to take regarding displaced Salvadorans, the United States treatment of aliens who are in similar circumstances as Salvadorans, and whether the temporary stay of deportation of Salvadorans should be altered. This section further provides that not later than 270 days after the referral of the report to a committee, the committee shall report to its respective House its oversight findings and any legislation it deems appropriate. The Department of Justice takes no position on the provisions for Congressional hearings on the subject matter of the Comptroller General's report.

Section 301(a)(1) of the bill directs the Attorney General not to detain or deport to El Salvador, aliens described in section 301(b) during the period beginning on the date of enactment of this bill and ending 270 days of continuous session of Congress after the date of transmittal of the report of the Comptroller General to the Speaker of the House of Representatives.

The Department of Justice opposes this provision. If enacted this provision would stay the deportation of all Salvadoran aliens who are unlawfully in the United States or who may subsequently surreptitiously enter the United States pending the completion of the Comptroller General's investigation. This would be an unprecedented legislative action. Moreover, it has been the experience of the Department of Justice that aliens who have been given lengthy voluntary departure dates fail to depart voluntarily, thus causing increased costs to effect their removal after they have exhausted their administrative and judicial remedies. Another practical consequence of a legislatively mandated stay of deportation would be the accumulation of an enormous backlog of cases which would eventually disrupt the orderly administration of the immigration laws. Finally, the unprecedented nationwide stay of deportation will undoubtedly have a "magnet effect." Not only would it encourage the illegal entry of Salvadorans who may be currently located in countries close to the United States, but it may also encourage mass emigration from El Salvador and other Central American countries. The recent experience with the Mariel boat lift may pale compared to the likely effect that the stay of deportation would have. While the emigration from Cuba was limited by the number of boats available to ferry aliens to Southern Florida, no such impediment exists for aliens who will want to enter the United States across our Southern border.

Section 301(a)(2) would permit a brief interrogation of an alien under section 287(a)(1) of the Immigration and Nationality Act for the purpose of determining whether this section applies to particular aliens.

The Department of Justice opposes the enactment of this section. First, certain language in this section is not clear. The word "brief" is not defined. It is likely that the interrogation of a particular alien to determine whether he or she is a national of El Salvador and is covered by the limitations set forth in section 301(b) will not always be brief. Therefore, the Department of Justice recommends the deletion of the word "brief" from this section thus leaving intact the language as set forth in section 287(a)(1) of the Immigration and Nationality Act.

Secondly, the practical aspects of this provision would undermine the enforcement activities of the Immigration and Naturalization Service. For example, assuming that an alien who was interrogated by an immigration officer stated that he was from El Salvador, had been continuously present in the United States since before November 1985 and was not deportable on grounds other than as described in the bill; the immigration officer would be unable to contest the veracity of the alien's statements, because normally the alien would be undocumented. Consequently, the alien, who was not in fact Salvadoran, would also receive a stay of deportation. The practical consequences of this section would be that by uttering the magic words "El Salvador" an alien would evade the law. The United States would become a "sanctuary" not just for Salvadorans but for any alien claiming to be one.

Section 301(b) sets forth the class of Salvadorans who would be protected by this legislation. In addition to being a national from El Salvador, the alien must have been continuously present in the United States before November 1985 and be excludable or deportable under certain enumerated provisions of the Immigration and Nationality Act. The alien would also have to agree in writing to depart voluntarily from the United States upon the expiration of the period referred to in section 301(a). The Department of Justice does not recommend the enactment of this section for the same reasons as set forth in our views to section 301(a) (1) and (2).

Section 302 of the bill would preclude the Salvadoran aliens from counting the period of the stay for purposes of section 244(a) of the Immigration and Nationality Act. The Department of Justice does not object to the language of this section.

We understand that an amendment be offered as Section 303 of the bill to make Salvadoran aliens, who are protected by the stay of deportation, ineligible to receive public assistance under Federal law. This section also provides that the same aliens may be deemed ineligible for public assistance under state or local laws. The Department of Justice does not object to the enactment of this provision. However, the Department of Justice defers its views on the subject matter to the Department of Health and Human Services, the agency with overall responsibility over the administration of federal entitlement benefits.

For all the foregoing reasons and for the reasons stated in Congressional testimony by Department of Justice officials in connection with this bill, the Department of Justice recommends against enactment of H.R. 822.

The Office of Management and Budget has advised this Department that there is no objection to submission of this report from the standpoint of the Administration program.

Sincerely,

JOHN R. BOLTON,
Assistant Attorney General.

THE SECRETARY OF STATE,
Washington, DC, June 11, 1986.

Hon. PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciary, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Attorney General and I have seriously considered Extended Voluntary Departure for Salvadorans (EVD) and continue to believe that it is not appropriate for illegal aliens from El Salvador.

Repeated studies of the treatment and conditions of deported Salvadorans have disclosed no persecution upon their return to El Salvador. The Intergovernmental Committee for Migration (ICM), a highly respected international organization, meets every Salvadoran who has been sent home by the United States, and offers resettlement and counseling assistance. Since December of 1984, ICM has assisted over 7,000 returnees and has not reported a single case of political persecution. There have been two deaths; one man was killed in a barroom fight over a soccer match, another was killed perpetrating a robbery. Between field interviews and questionnaires, ICM maintains approximately 70 percent follow-up.

Some advocates of EVD argue that general conditions in El Salvador put every Salvadoran in physical danger. The distinction between "targeting" of deportees, as opposed to general conditions for people in today's El Salvador, is important. If we had evidence that there is a pattern of persecution against deportees we would have cause to consider EVD. The "general conditions" argument is unacceptable, since it would allow literally every citizen of El Salvador to move to the United States.

Most Salvadoran asylum applicants are not able to show that violence is directed specifically at them, or that they would be in any greater danger than other Salvadorans if they were to return. Most simply state that they have come to the United States to work or because general conditions are bad in El Salvador. In a March 1985 Spanish International Television Poll, 67 percent of Salvadoran voters polled said that they would emigrate to the United States to work if given the opportunity to do so. When we discuss suspension of deportation, what we are discussing is whether people who emigrate to the United States illegally, and who do not meet the refugee standard established under our own laws, should be allowed to stay here anyway, under a specially crafted exception.

We do not believe that the appropriate response to the problems of poverty or violence in the world is to allow anyone from a troubled country to move to America. We continue to believe that EVD

for Salvadorans is an inappropriate measure. The Administration, therefore, opposes H.R. 822.

Sincerely yours,

GEORGE P. SHULTZ.

OVERSIGHT STATEMENT

Clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives is inapplicable since no oversight findings and recommendations have been received from the Committee on Government Operations.

INFLATIONARY IMPACT STATEMENT

Pursuant to Clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that this bill will not have a significant inflationary effect on prices and costs in the operation of the national economy.

ESTIMATE OF COST

Pursuant to Clause 7 of rule XIII of the Rules of the House of Representatives, the Committee states that it generally concurs with the cost estimate submitted by the Congressional Budget Office as set forth below.

BUDGETARY INFORMATION

Clause 2(l)(3)(B) of rule XI of the Rules of the House of Representatives is inapplicable because the instant legislation does not provide new budget authority. Pursuant to Clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives, the following estimate was prepared by the Congressional Budget Office and submitted to the Committee:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 5, 1986.

Hon. PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciary, U.S. House of Representatives, Rayburn House Office Building, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 822, a bill to provide for a General Accounting Office (GAO) investigation and report on conditions of displaced Salvadorans, to provide certain rules of the House of Representatives and of the Senate with respect to review of the report, to provide for the temporary stay of detention and deportation of certain Salvadorans, and other purposes, as ordered reported by the House Committee on the Judiciary, July 30, 1986.

The GAO investigation is to begin within 60 days of enactment, and the report is due no later than one year after the study begins. H.R. 822 would prohibit the detention and deportation of Salvadoran nationals continuously present in the United States since before November 7, 1985 for a period beginning on the day of enactment of the bill and ending 270 days of continuous session of Congress after GAO transmits its report.

CBO estimates that enactment of H.R. 822 could have no significant impact on the federal budget. Based on information provided by the GAO, CBO estimates that this investigation and report will cost between $300,000 and $500,000, largely in 1987, but is not likely to affect total agency spending. Even though most Salvadoran aliens could not be detained or deported during the specified period, should this legislation be enacted, there would be little or no cost savings because there is a backlog of other catagories of aliens to be detained or deported.

No costs would be incurred by state or local governments as a result of enactment of this bill.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

RUDOLPH G. PENNER, *Director.*

COMMITTEE RECOMMENDATION

After careful consideration of this legislation, the Committee is of the opinion that this bill should be enacted and accordingly recommends that H.R. 822, as amended, do pass.

CHANGES IN EXISTING LAW

Pursuant to Clause 3 of rule XIII of the Rules of the House of Representatives, no changes are made to existing law by this bill, as amended.

DISSENTING VIEWS OF HON. ROMANO L. MAZZOLI

While I sympathize with the plight of Salvadorans who are currently in the United States in an illegal status, I do not believe this legislation provides the appropriate response.

1. H.R. 822 is inconsistent with twenty years of Congressional efforts to eliminate favoritism from United States immigration and refugee law and policies.

In 1965, Congress eliminated the longstanding national origins quota system under which one's eligibility to immigrate to the United States should be based exclusively on nationality and country of origin.

In its place Congress established a system of preferences based on family relationships and labor skills, however, the preferences were not uniform between hemispheres and, hemispheric quotas were continued form the old law.

Later on, Congress provided a uniform, per-country ceiling of 20,000 for immigration from all countries in the world, and it adopted a uniform preference system for immigration from both the eastern and western hemispheres.

The final step Congress took to eliminate favoritism from the nation's immigration law was to pass the Refugee Act of 1980. It removed ideological and georaphical considerations from refugee-selection policies and procedures.

So, for the past two decades, Congress has moved to provide equality of opportunity for all immigrants and all refugees seeking admission to the United States.

This legislation before us, H.R. 822, by contrast, would turn back the clock and return us to the days of nation-specific and, ideology-specific legislation. This, in my judgement, would be a serious mistake and would run counter to all Congress has done for twenty years to bring fairness and equity to our immigration and refugee laws.

2. The Refugee Act of 1980 provides the appropriate remedy to Salvadorans and to all persons who establish themselves to be refugees fleeing persecution in their home countries.

As I noted above, Congress, in 1980, properly eliminated ideology and place of birth as the primary criteria for refugee eligibility. In doing so, Congress wanted to "depoliticize" the U.S. response to refugee problems around the world and to ensure that humanitarian concerns would be paramount in our admission polices.

The 1980 Refugee Act defined refugee by accepting the definition contained in established international law (i.e. the U.N. Convention and Protocol Relating to the Status of Refugees) which requires a nation to harbor and protect any person who has a "well-founded fear of persecution based upon race, religion, nationality, membership in a particular social group or political opinion."

It is to be noted that among the arguments advanced by supporters of H.R. 822 is that most Salvadorans in this country have fled persecution in El Salvador and would be subject to persecution if returned there. In any such case, the Refugee act applies and applicants may apply for asylum in this country. Since there is relief available to such persons, H.R. 822 is not needed.

3. International Law has never provided relief for persons fleeing civil strife or military hostilities.

Another argument advanced by those who support H.R. 822 is that Salvadorans now in the United States fear a return to their homeland not because of persecution but because of civil strife, military hostilities, and random violence.

During consideration of the Refugee Act of 1980, legislative efforts to provide relief to persons uprooted by military hostilities and natural disasters were specifically rejected in order to maintain the harmony of U.S. law to international law.

I recognize that occasional administrative grants of parole or extended voluntary departure have been made over the years by the Executive Branch, but most occurred prior to the enactment of the Refugee Act of 1980. This Act is intended to be the prevailing policy and program replacing all earlier ad-hoc Piece-meal approaches which emphasized politics and foreign policy considerations rather than humanitarian considerations.

4. The issue presented here is an immigration issue not a refugee or asylum issue.

Over the years, persons from El Salvador have come to the United States to work as well as to immigrate here as intending citizens. The unsettled situation now prevailing in El Salvador is not the only cause for Salvadoran entry into the United States.

The Salvadoran people now in the United States illegally are the very people whom we should welcome as citizens or permanent residents. They are intelligent and talented and are willing to work hard for a better future for themselves and their families.

The Immigration Subcommittee has begun a series of hearings which I hope will lead to a revision of the current Immigration and Nationality Act which would allow more people of talent, character and good work-habits to emigrate to the United States whether or not they have close family here already.

Were Congress to adopt H.R. 822 it would, at best, provide fleeting, temporary relief to some of these Salvadoran people. What these good people need—and are entitled to—is a permanent opportunity to enter the United States legally as immigrants.

For these reasons, I oppose passage by the House of H.R. 822.

ROMANO L. MAZZOLI.

DISSENTING VIEWS OF MESSRS. LUNGREN, FISH, MOORHEAD, HYDE, KINDNESS, SENSENBRENNER, McCOLLUM, SHAW, GEKAS, DEWINE, DANNEMEYER, SWINDALL, AND COBLE

We strongly oppose the passage of H.R. 822 which grants extended voluntary departure (EVD) to certain Salvadorans. This legislation is not only unnecessary and bad public policy, but establishes a precedent which conflicts with the Refugee Act passed by Congress in 1980 (Public Law 96-212).

Extended Voluntary Departure (EVD) is a temporary status exercised at the discretion of the Attorney General which has never before been granted by statute, and has only once—Poland, 1981—been granted administratively by the Attorney General since Congress adopted the Refugee Act of 1980.

Congress passed the Refugee Act of 1980 to supplant the previous pattern of nation-specific administrative determinations. It set up a system under which any person—regardless of origin—can apply for and receive individual consideration of the merits of his or her claim to asylum or refugee status. This Act is intended to be the exclusive available remedy for individuals seeking protection from life-threatening political persecution.

H.R. 822 would congressionally grant EVD status and suspend deportation of all Salvadorans now in the United States until the GAO report determining political conditions in El Salvador is completed. When we discuss suspension of deportation, what we are discussing is whether people who emigrate to the United States illegally, and who do not meet the refugee standard established under our own laws, should be allowed to stay here anyway, under a specially crafted exception. The already available evidence proves that most Salvadorans are coming (and have come) to this country for economic reasons and not because of political persecution.

This evidence underscores our contention that the vast majority of Salvadorans are not refugees according to the strict U.S. and U.N. definition—rather, they are economic migrants. Those Salvadorans seeking political asylum, i.e., those who can prove their lives are endangered, can apply for asylum in the United States. As of last year, of the 500,000 to 750,000 Salvadorans in the United States, only about 12,000 applied for political asylum. Moreover, why, among those who have applied, have most been unsuccessful? Not because of discrimination. All claims are processed the same way regardless of the applicant's home country—and asylum is granted to those who demonstrate a well-founded fear of persecution. In this regard, INS and State testified that many applications of the Salvadorans have proven to be "patently frivolous on their face."

Repeated investigations into the treatment and condition of Salvadorans who have been deported from the United States have dis-

closed no persecution upon their return to El Salvador. Pursuant to a plan proposed by Members of this Committee, the Intergovernmental Committee for Migration (ICM), a highly respected international organization, meets every Salvadoran who has been sent home by the United States and offers them resettlement and counseling assistance. Since December of 1984, ICM has assisted over 7,000 returnees and has not reported a single case of political persecution. Just a short while ago, ICM reported to Members of the Judiciary Committee on their April 1986 special survey trip to study the most recent developments concerning returnees in El Salvador. ICM has been successful in maintaining contact or recontacting 79% of their total caseload of returnees between December 1, 1984 and December 1, 1985. The information gathered is based on interviews conducted by ICM of Salvadorans or their relatives after their return to El Salvador and is entirely voluntary. ICM has made the following findings:

During the first interviews at the ICM office, the large majority of the returnees indicated as primary motives for their departure their poor economic situation in El Salvador and the wish to find employment abroad. This indication was confirmed through the survey and other follow-up action with the returnees.

Of the 4,822 returnees, 35 alleged that they had problems relating to their security in El Salvador. ICM referred 13 persons to the relevant embassies for consideration under their special humanitarian resettlement programs and ICM's on-going emigration program in El Salvador. Two of these cases have so far departed from El Salvador, seven are pending decision, and four were rejected by resettlement countries on the grounds that they were economic cases. Of those remaining, in nine cases it turned out that their problems were of an economic nature or had otherwise been solved, six had again left the country by their own means, one did not reestablish contact with ICM and in six other cases, which had been contacted through the third survey, ICM is endeavoring to locate the persons concerned and ascertain their specific needs.

Over the period from 1 December 1984 to 13 December 1985, it was reported to ICM that the death of four returnees had occurred, two from natural causes. The other two returnees had been killed, one in a dispute over a football game in a bar and the other in the process of robbing a store. In both the latter cases, specific investigations were made which corroborated these findings.

Two returnees were arrested upon arrival in San Salvador in connection with the Zona Rosa incident during which four U.S. marines were killed. These two returnees were never interviewed by ICM.

Some 29% of those returnees located by ICM through relatives or friends had again left El Salvador for the United States or other countries. A number of returnees have gone through the ICM facilities more than once, and several have made the trip from the United States more than twice.

Some advocates of EVD argue that "general conditions" in El Salvador put every Salvadoran in physical danger. The distinction between "targeting" of deportees, as opposed to general conditions for people in today's El Salvador, is important. If we had evidence that there is a widespread pattern of persecution against deportees,

we would have cause to consider EVD. The "general conditions" argument is unacceptable, since it would allow literally every citizen of El Salvador to move to the United States. Even in the United States the "general conditions" in many neighborhoods of New York City, Chicago, Miami, Los Angeles, Washington, DC and other cities may put every person in these areas in reasonable apprehension of physical danger. However, as much as we try to protect individuals from these dangers, we cannot absolutely guarantee each individual safety.

Most Salvadoran asylum applicants cannot show that violence is directed specifically at them, or that they would be in any greater danger than other Salvadorans if they were to return. Most simply state that they have come to the United States to work or because general conditions are bad in El Salvador. In March of 1985, over 65% of eligible voters voted in the national assembly elections in El Salvador—amplifying their obvious commitment to their own country's future. Yet a Spanish International Television Poll of those committed voters, found 67% of them wishing to emigrate to the United States if given the opportunity to do so.

In addition, the violence in El Salvador continues to decrease as indicated by the decline of civilian deaths in the war-battered provinces. According to El Salvador press reports gathered by the State Department, in 1981, over 9,000 civilian deaths were reported due to random violence. In 1984, similar reports found 800 civilian deaths due to random violence, and in 1985, the number of civilian deaths had declined to 335. By way of comparison, New York City experienced over 1,600 deaths due to homicide in 1983. While we abhor the existence of any violent death, we cannot introduce legislation providing asylum for all in the world who fear physical violence.

It is important to note that El Salvador ranked second only to Mexico in the number of its nationals apprehended as illegal aliens in the United States in the last two decades prior to the political strife of 1979. It is the most densely populated country in the Western Hemisphere and has a long history of illegal migration to the United States. It is estimated that 300,000 to 500,000 Salvadorans were illegally present in the United States before the insurgency began in 1979. In addition, according to the 1985 State Department report, Salvadorans have been sending at least $30 million a month to their families in El Salvador.

If threat of political persecution were the reason for coming to the United States, then why do Salvadorans not go to safe countries closer to their own proximity?

The United States is not the last safe haven. Critics claim that there is no other place for these individuals to go and the United States must give them refuge. This is untrue. There are places closer to El Salvador that will provide refuge to these people. Most areas of El Salvador are not unsafe and the Hondurans provide safe refugee camps open to all Salvadorans seeking haven. In addition, almost all Salvadorans come to the United States by land routes. In doing so, they must cross at least two borders—Mexico and Guatemala. Mexico also is a "safe haven" for Salvadorans, and the U.N.'s High Commissioner for Refugees has established a presence in both Mexico and Honduras.

After reviewing the case in support of granting EVD for Salvadorans, one can only ask why other countries experiencing political strife around the world should not be equally or even more qualified for EVD status than El Salvador.

If the precedent set by this legislation was followed consistently, there is no reason why EVD should not be granted to many other countries. However, by doing so we set ourselves up for the same piecemeal, emotionally charged political game that occurred prior to the 1980 Refugee Act when Congress granted special refugee status and asylum to countries on a case by case basis.

In defense of the bill, some claim that EVD status is granted only until a GAO report provides us with more information as to the conditions in El Salvador for those living there. Yet, we now have all the GAO information requested in the bill provided by many other sources. The GAO Study is simply not needed. INS and State claim that another study would accomplish little that has not already been done. Surveys of refugees and returnees are going on all the time. Non-governmental organizations have also conducted surveys. Reports recently issued specifically answer questions and provide information on each question GAO is to answer in the bill.

For example, these reports include:

an October 1985 questionnaire provided by the San Salvador Embassy documents Salvadorans' attitudes on returning to San Salvador.

a March 31, 1986 Report by the State Department provides specific information on the current political situation in El Salvador.

a 1985 State Department-sponsored report (215 pages in length) documents the living conditions in El Salvador for its displaced population including health, medical, employment, family life, education, food supply, sanitation, water supply relocation and settlement conditions.

previously mentioned ICM reports that are current as of April this year.

In addition, many private, political and religious organizations, and volunteer groups, are doing their own surveys that provide additional information from many political perspectives.

What another report could possibly add, after the extensive study of this area by previous sources, is very dubious. No doubt, GAO would be relying on some of the very same sources for its information that have been used for previous reports.

In conclusion, much information is already available which clearly refutes the need for this legislation. In short, the GAO report is but an excuse on which the balance of this legislation rests. The precedent it sets can only open Congress up to a stream of other countries requesting such status and put us into the same situation we sought to avoid by passing the 1980 Refugee Act.

Passage of this legislation would send an explicit message to Salvadorans and others that seek refuge, namely, that the United States is no longer applying the strict definition of political asylum and refugee status and add further to the disarray of our current immigration laws.

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CARLOS J. MOORHEAD.
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THOMAS N. KINDNESS.
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DISSENTING VIEWS OF CONGRESSMAN F. JAMES SENSENBRENNER, JR.

H.R. 822 is an attempt to make a political statement against the Administration's policies in Central America. But in making this statement, the bill reverses the intent of the Refugee Act of 1980. It is a bill whose time has passed. Many of the facts used to support the bill are no longer valid or are inaccurate.

H.R. 822 requests studies from the GAO, although all of the requested information is currently available through other sources. There are studies available, not only from U.S. government sources such as the Agency for International Development, but also from the International Committee for Migration, an independent Geneva-based international organization. ICM's most recent studies tracked virtually all of the returnees to El Salvador. Of the more than 4,800 people questioned, only 35 were alleged to have problems related to their security. That is seven-tenths of one percent! These problems were handled. Continuing with their follow-up, ICM has had only four of the returnees reported as having died, two from natural causes, one in a barroom brawl and one during the process of a robbery. The facts and statistics are already known and there is no need for this legislation.

The number of El Salvadorans currently in the United States who are here illegally is estimated at 500,000 to 750,000. It is also estimated that 350,000 to 500,000 came to the United States before the civil war broke out in 1979. Yet, under this bill, the people who arrived before 1979 will be granted Extended Voluntary Departure status. These people came to the United States drawn by the economic magnet, not as people who came with a well founded fear of persecution.

The Refugee Act of 1980 defined a refugee according to the United Nation's definition. The United Nations did not include civil strife or unrest as part of its criteria. It made a universal definition of a refugee irrespective of country origin or philosophy. H.R. 822 reverses that to make the definition country specific and reverses the United Nations' criteria.

We do not "owe" the people of El Salvador preferential treatment. There is civil strife and unrest all over the world. There are greater incidents of violence right here in the United States. If we are redefining our responsibilities to the people of the world, our own citizens in many areas of the country deserve our first consideration, while citizens of many other countries could rightfully claim our attention before the people of El Salvador.

It further should be noted there has been a sharp decrease in random violence in El Salvador. In 1981, over 9,000 civilian deaths were reported due to random violence, in 1984, 800 civilian deaths, and in 1985, 335 deaths.

It is not fair to use the Salvadorans in the United States as a platform to make another political statement about the Administration's policies in Central America. With the time frames involved, these people will have been in the United States for ten years by the time the issue has been restudied. Who is going to depart voluntarily after ten years to go back to a country where there is poverty and a greatly reduced standard of living? Is the Congress going to insist on their departure? This bill is nothing more than a political statement making major changes in our laws and policies and is not the proper forum nor the proper vehicle to make such a statement.

F. JAMES SENSENBRENNER, Jr.

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